

**REMARKS/ARGUMENTS**

Claims 1-14 stand rejected in the outstanding Official Action. Claims 2 and 9 have been cancelled without prejudice and claims 1, 3, 5, 8, 10 and 12 amended. Accordingly, claims 1, 3-8 and 10-14 are the only claims remaining in this application.

The Examiner's acknowledgment of Applicants' claim for priority and receipt of the certified copies of the priority documents is very much appreciated. The Examiner's indication of acceptance of the previously filed formal drawings is appreciated. Finally, the Examiner's consideration of the prior art in Applicants' previously submitted Information Disclosure Statement is appreciated.

Claims 1-14 stand rejected under 35 USC §102 as being anticipated by Cooper (U.S. Patent 6,829,713). The Court of Appeals for the Federal Circuit has noted in the case of *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick*, 221 USPQ 481, 485 (Fed. Cir. 1984) that "[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Applicants' independent claims 1 and 8 specify a clock signal generator which generates a clock signal for driving the processing operations of the apparatus where the clock signal has a variable frequency. Applicants' claim recites a performance counter which adds a work increment value to an accumulated work done value so as to provide an indication of the amount of processing work performed by the apparatus. This permits the measurement of the work of a variable frequency processor which is not the case in the Cooper reference.

Cooper discloses a system for calculating the utilization of a CPU, i.e., the duty cycle of a CPU, by recording the number of CPU cycles within a predetermined period of time. It then

calculates the total number of possible cycles if the CPU was running for the whole predetermined time period. Cooper utilizes a fixed frequency clock and merely counts the number of CPU cycles and thus determines a "ratio of this active CPU clock signal time to the sampling time interval." (Cooper column 8, lines 5 and 6). While this indicates a ratio or duty cycle of the fixed clock frequency CPU in Cooper, this would not provide an accurate measure of the work done by a variable frequency clock cycle processor (since it would not know the frequency of operation of the processor during the time period).

Applicants' amended claim 1 reflects the fact that a variable clock signal is used to drive processing operations of the apparatus and a work increment value is dependent upon the clock signal frequency at or close to the time that the performance counter count is incremented. Cooper does not address the possibility that the clock signal can have a variable frequency and therefore cannot solve the problem solved by the present invention.

Applicants have amended independent claims 1 and 8 in similar fashion so as to clearly specify the apparatus and method which serve to provide an indication of the accumulated work done with respect to a variable clock cycle.

In summary, the amended claims are not anticipated by Cooper because Cooper does not disclose a work increment value that it is dependent upon the value of a variable clock signal frequency at or close to a given time. Cooper is primarily concerned with calculating utilization of a CPU where the CPU operates at a regular fixed clock rate and not at a variable clock rate. Thus, Applicants' invention solves a problem, not encountered or anticipated by Cooper, in that it is desirable to calculate the amount of work done by a processor when the processor runs at different frequencies, i.e., a variable clock rate. Cooper does not even recognize the problem, let

alone provide a solution for that problem. Accordingly, Cooper certainly does not anticipate and cannot render obvious Applicants' novel solution to the problem.

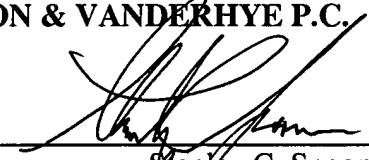
Accordingly, any further rejection of claims 1-14 under 35 USC §102 over the Cooper reference is respectfully traversed.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1, 3-8 and 10-14 as amended are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicants' undersigned representative.

Respectfully submitted,

**NIXON & VANDERHYTE P.C.**

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